

Amendment 1 to RFP Number: 317.03-109:

**State of Tennessee Response to Contractor
Comments, Questions, and Requests for Clarification**

CONTENTS

**Questions and Answers
Amendment 1: IT Research & Advisory Services**

November 19, 2003

RFP Number: 317.03-109: State of Tennessee Response to Contractor Comments, Questions, and Requests for Clarification

Following is a compilation of all Comments, Questions, and Requests for Clarification submitted by Contractors as of the deadline of 4:30 PM on 11/07. Each is followed by the State's Response.

1. **Question:** Section 1.3 - Contract Duration - Might we make the Term Extension step a mutual evaluation / approval process?

Answer:

The right to extend the terms of this contract beyond January 3, 2005, is at the sole discretion of the State. Section B.2 of the Pro Forma Contract states:

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no greater than three (3) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

An amendment would obviously require Contractor assent.

2. **Question:** Section 1.3 - Contract Duration - page 3: the State seems to be reserving the unilateral right to a four (4) year Contract, with out year pricing to remain at today's prices; e.g., "*...shall be based upon rates provided for in the original contract and proposal*". Is there a process / opportunity to request price increases over time?

Answer:

The term of the contract resulting from this RFP is for the period January 3, 2004, through January 2, 2005 with the option for the State to extend the term for two (2) additional one (1) year periods. The cost proposal submitted in response to this RFP must incorporate all costs for the proposed scope of services for the total contract period, including optional extension periods. The costs proposed in the Cost Proposal, which will be incorporated into the ensuring contract, will be firm for the duration of the contract, including optional extension periods.

3. **Question:** Section 2 - The sequence of events outlines that the contract signing will be on January 2nd, 2004. On December 18th, when the written evaluation is sent out to the Proposers, will the winning firm be notified then? And, if so, would it possible to have the contract signed before December 31st, 2003, to be recognized in this fiscal year? -- (in this case, the billing date would still be for January : net 30 from the invoice date).

Answer:

All Proposers, including the apparent successful Proposer will be sent an Evaluation Notice on December 18, 2003. The contract signature date will be no earlier than January 2, 2004.

4. **Question:** Section 3.11 - Prohibition of Proposer Terms and Conditions - Is the Proposer permitted to submit supplemental Terms and Conditions to address concerns not otherwise addressed by the State's T's & C's?

Answer:

The Section 3.11 of the RFP prohibits a Proposer's submission of its own contract terms and conditions in response to this RFP. Proposers are given the opportunity during the "Written Comments" period to ask any questions and request any amendments to contract language. The State will respond to questions and requested amendments to contract language in accordance with Section 3.3.4 of this RFP.

5. **Question:** At the bidders conference the State provided an oral response directing vendors to address issues regarding the consideration and inclusion of additional terms and conditions as a part of the question and answer process. I understand that the State will provide a written response to questions, however in the interest of time, I am attaching a document that contains supplemental terms and conditions that the Proposer believes are not otherwise addressed by the State. The Proposer respectfully request your consideration and inclusion of the attached.

See State responses below to each proposed supplemental terms and conditions.

1. **Ownership of the Services.** Client agrees that the Proposer or its licensors own the Services. Client acknowledges that the Services and the Program and Database (as defined in Section 3) are copyrighted by the Proposer or its licensors and are protected by law. The Proposer reserves all rights not granted under this Agreement.

Answer:

The State will not consider this term and condition.

2. **Use of the Services.** (a) Client shall designate individually named user(s) who are licensed to use the Services (each, a "User"). Client represents that it will limit access to the Services to the agreed upon number of Users. Client may use the Services solely for its own internal purposes. Services are to be used solely for each User's individual business purposes.

Answer:

Refer to Amendment 2 of this RFP.

(b) Except as set forth in this Agreement and unless required by Law, Client may not copy or reproduce the Services in any form or by any means, including but not limited to, information storage and retrieval systems, recordings and retransmittals, use in any timesharing, service bureau, bulletin board or similar arrangement or public display, without the Proposer's written permission. Client may not disclose, disseminate or distribute the Services to any other party. Client may not publicly use or reprint excerpts from the Services without The Proposer's prior written consent. Client may purchase reprints of the Services at the Proposer's then-current rates. Client shall use all reprints in accordance with the terms of this Agreement.

Answer:

Refer to Amendment 2 of this RFP.

3. **Electronic Delivery/CD-ROM.** Client acknowledges that if it receives any Services by electronic delivery, use of an on-line service or by CD-ROM, such Services are licensed to Client on the terms set forth below.

Access by Electronic Delivery. Upon payment of the applicable fees, the Proposer will provide Client with passwords to permit electronic access to the Services for up to the maximum number of Users licensed pursuant to the Service Agreement. Each User who accesses the Services by the Proposer Web site will receive a password. Unless otherwise stated, another User may not be substituted for the original User, without prior written approval from the Proposer. Client agrees to notify the Proposer when a User is no longer entitled to use a password so that the Proposer may cancel that password and issue a new password for a replacement User, if any. Client agrees that Users may not share passwords. Each User may print one copy of the Proposer research for the User's personal use. Users may circulate copies of the Services, electronic or otherwise, only to other Users. Such copies may not be further reproduced or distributed.

Answer:

Refer to Amendment 2 of this RFP.

(b) **Access by CD-ROM.** If Client receives a Service on CD-ROM, the compact disk ("Disk") contains (1) a database ("Database") containing reports, data compilations and other research materials, and (2) computer programs ("Programs") which enable Client to access and use the Database. Client owns only the physical Disk on which the Database and Programs are recorded. If Client receives a Service as a database for use with a third party database program, Client will receive an electronic copy of the Database. Client may (1) use the Programs to access the Database, if applicable, and (2) use the Database for internal informational purposes.

Answer:

The State will not consider this term and condition.

(c) **Security Precautions.** If Client receives a Service by the Internet, Intranet or other compatible World Wide Web or portable format, Client agrees that it: (1) will install software, to the extent available, to ensure that only authorized Users have access to the Services; and (2) has installed appropriate firewall protection. Client shall be responsible for all activity under Client's passwords, and will notify the Proposer promptly if it becomes aware of any unauthorized use of passwords or Services.

Answer:

The State will not consider this term and condition.

(d) **Prohibited Uses. Client will NOT (Except As Provided Herein):**

- Sublicense, lease, sell, transfer or assign this License;
- Copy any part of the Database or the Programs for any purpose;
- Reverse engineer, decompile, disassemble, translate or convert the Programs to human readable (source code) form (except as local law may permit without violation of local copyright law);
- Circumvent the encrypted data or gain access to more data than was licensed;
- Use the Services in any manner which violates this license or any applicable laws.

Answer:

The State will not consider this term and condition.

4. **Monitoring/Audit.** Client acknowledges that the Proposer may monitor on-line activity by Users, and agrees to inform all Users that the Proposer may monitor their on-line activity. Upon request, Client agrees to provide the Proposer with reasonable evidence of compliance with this Agreement, in the form of a confirming letter from a responsible Client Contracting or Finance official.

Answer:

The State will not consider this term and condition.

6. **Client Meetings.** Participation by the Proposer in Client meetings and analyst engagements (collectively "sessions") is subject to The Proposer's acceptance of Client's request. The Proposer owns all rights to the sessions, including all related Services. Client's use of the sessions is subject to the terms of this Agreement. Client may not copy, distribute, record, retransmit or make available to any party the content of any session without the Proposer's prior written consent.

Answer:

The State will not consider this term and condition.

6. **Warranties and Warranty Disclaimer.** (a) **Non-Infringement Warranty.** The Proposer warrants that the Services, in the form provided by the Proposer, will not violate or infringe upon the intellectual property rights of any third party.

(b) **WARRANTY OF DISK.** THE PROPOSER AND ITS LICENSORS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET CLIENT REQUIREMENTS, OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR FREE. NOTWITHSTANDING THE FOREGOING, IF CLIENT RECEIVES SERVICES ON DISK, THE PROPOSER WARRANTS THAT THE DISK WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE FOR 90 DAYS FROM THE DATE OF DELIVERY.

(c) **DISCLAIMER OF ALL OTHER WARRANTIES.** ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS SET FORTH ABOVE, THE PROPOSER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. THE INFORMATION IN THE SERVICES HAS BEEN OBTAINED FROM SOURCES THAT THE PROPOSER BELIEVES TO BE RELIABLE. ALL SERVICES SPEAK AS OF THE PUBLICATION DATE AND THE PROPOSER HAS NO OBLIGATION TO ADVISE CLIENT OF ANY CHANGE IN THE INFORMATION OR VIEWS CONTAINED IN THE SERVICES. THE SERVICES ARE INTENDED SOLELY AS A RESEARCH TOOL AND MAY REFLECT ONE OR A LIMITED NUMBER OF PERSPECTIVES THAT MAY NOT BE SHARED BY OTHER INDUSTRY EXPERTS, AND ARE NOT MEANT AS SPECIFIC GUIDES TO ACTION.

Answer:

The State will not consider this term and condition.

7. **LIMITATION OF LIABILITY.** THE PROPOSER'S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT AND THE SERVICES UNDER ALL THEORIES OF LIABILITY SHALL BE LIMITED TO THE FEE PAID BY CLIENT FOR SUCH SERVICES DURING THE PRECEDING TWELVE MONTHS. IN NO EVENT WILL THE PROPOSER OR ITS LICENSORS BE LIABLE FOR ANY ERRORS, OMISSIONS OR INADEQUACIES IN THE SERVICES OR FOR INTERPRETATIONS THEREOF. THE PROPOSER AND ITS LICENSORS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, SUCH AS DAMAGES FOR LOST PROFITS, BUSINESS FAILURE OR LOSS, ARISING OUT OF THE USE OF THE SERVICES, WHETHER OR NOT THE PROPOSER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Answer:

Refer to Amendment 2 of this RFP.

8. **Cancellation of Services by The Proposer.** If the Proposer discontinues any of the Services, the Proposer may substitute a similar Service, at its sole discretion.

Answer:

The State will not consider this term and condition.

9. **Miscellaneous**

(a) **Assignability.** This Agreement may not be assigned by Client without the written consent of the Proposer, which consent in the case of merger, acquisition or other transfer of substantial ownership shall not be unreasonably withheld. The Proposer may assign this Agreement to a parent, subsidiary or successor entity.

Answer:

The State will not consider this term and condition.

(b) **Arbitration.** Any unresolved dispute under this Agreement shall be decided by arbitration conducted in Tennessee before a single arbitrator under the Streamlined Arbitration Rules and Procedures of JAMS, or such other entity as the parties may agree. The decision of the arbitrator shall be final and binding, and the award may be entered in any court having jurisdiction. The parties consent to the jurisdiction of the courts of the state of Tennessee. The Proposer shall have the right to obtain injunctive relief in any court of competent jurisdiction in the event of any breach of Sections 2 or 3.

Answer:

The State will not consider this term and condition.

(c) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without reference to its conflict of law principles.

Answer:

The State will not consider this term and condition.

(d) **Client Confidential Information.** The Proposer agrees to keep confidential any information communicated by Client to The Proposer in connection with this Agreement that Client desires the Proposer to keep confidential provided that such material is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by the Proposer; (3) entered the public domain through no fault of the Proposer subsequent to Client's communication to the Proposer; (4) is in the Proposer's possession free of any obligation of confidence at the time of Client's communication to the Proposer; (5) is communicated by the Client to a third party free of any obligation of confidence; or (6) Client has consented to. Additionally, the Proposer may disclose such information to the extent required by legal process. Client acknowledges that the Proposer is in the business of researching and analyzing information technology and this obligation of confidence shall not apply to information obtained by the Proposer's research, analysis or consulting organization from sources other than the employees receiving confidential information provided under this Agreement.

Answer:

The State will not consider this term and condition.

(e) **Force Majeure.** Except for payment obligations, nonperformance by either party shall be excused to the extent that performance is rendered impossible by strike, acts of God, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party.

Answer:

The State will not consider this term and condition.

(f) **Use of Excerpts.** Client agrees that it shall not use the Proposer's name in the promotion of its products or services and that it shall only externally quote the Services in accordance with the terms of the Proposer's then-current Fair Use Policy, which can be viewed on the Proposer's web-site.

Answer:

The State will not consider this term and condition.

(g) **Use of Client Name.** Client grants the Proposer permission to use its name in the Proposer client lists.

Answer:

The State will not consider this term and condition.

(h) **No Third Party Beneficiaries.** This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by, any third party. It is the intention of the Proposer and Client that no third party shall have the right to (i) rely on the Services provided by the Proposer, or (ii) seek to impose liability on the Proposer as a result of the Services.

Answer:

The State will not consider this term and condition.

6. Question: Section 3.18, Licensure: This clause states, "Before a contract pursuant to this RFP is signed, the Vendor must hold all necessary, applicable business and professional licenses. The state may require any or all Proposers to submit evidence of proper Licensure." Is the intent of this clause is to require out-of-state businesses to obtain a license to conduct its professional business within the State of Tennessee? If so, please provide that State organization's name, Address and City where this potential Offeror may register for a Business License.

Answer:

No. The intent is to ensure that if a professional or business license is "necessary or applicable" by the State of Tennessee for the Contractor to provide the services requested under this RFP, that the Contractor is aware that verification of such licensing may be required.

7. Question:Section 5.2.7. In order for the Proposer to provide access to our comprehensive library of Intellectual Property for the seven (7) RFP evaluators, we require names and email addresses for the seven (7) evaluators. Our process is in line with standard licensing practices in the industry. For example, to obtain access to a software application delivered via the web, detailed contact information is required. Upon receipt of the names and email addresses, unique user ids will be established and delivered to each evaluator via a welcome letter.

Answer:

Evaluator names and email addresses will not be provided to Proposers. As stated in Section 5.2.7, for RFP evaluation purposes only, the Proposer must establish and provide in response to this section, seven unique user IDs (such as evaluator1 through evaluator7.) The only email address available will be the RFP Coordinator, Leslie Humphreys, leslie.tipton.humphreys@state.tn.us for each evaluator.

8. **Question:** Section 5.3.3 - Cost Proposal - Please define what is intended by use of term "Consulting Services". Does this suggest the potential need for ad hoc Professional Services on a "Time and Materials" basis? Alternately, does this preclude the possibility for a Firm, Fixed Price quote in response to an SOW?

Answer:

Consulting services will be utilized on an ad hoc basis. The State of Tennessee will prepare a Statement of Work (SOW) that defines the services needed for a special project, ex. Developing a Data Warehousing Deployment Strategy. Typically these projects will be for a brief amount of time.

Pricing for these services is based on time and materials and excludes a firm and fixed price. The Contractor would provide a maximum project price for the services requested by the State SOW. The State shall only be billed for actual work provided. (See Section A.5)

9. **Question:** Section A.5, paragraph 2, page 25 seems to request but a single Consulting position / labor rate. Is that correct?

Answer:

Refer to Amendment 2 of this RFP.

10. **Question:** Section E.4 - State Ownership of Work Products -Per Section 1.1, since the intent of this RFP is to acquire membership in research and advisory services that provide access to pre-existing, (often copy-righted) Intellectual Property, can the State provide clarification regarding the expectation of ownership of work product and unlimited distribution rights?

Answer:

Refer to Amendment 2 of this RFP.

11. **Question:** Attachment A – IT Research & Advisory Services Technical Requirements- Will the state provide an electronic copy of attachment A in a format other than PDF, such as MS Word or Excel?

Answer:

The RFP, including Attachment A, will be provided as a MS Word document.

12. **Question:** Is the State of Tennessee looking to supplement the existing Gartner research contract with a second firm for the 2004-2005 year? Or, is the St. of Tenn planning to choose only one research and advisory firm for the 2004-2005 year?

Answer:

The State of Tennessee will choose only one research and advisory firm to provide services requested in RFP 317.03-109 for the period January 3, 2004, through January 2, 2005 and any term extension periods the State may exercise.